

THE LATEST IN THE MOLD DEBATE

Presented by

Jeff Slivka

**Director of Environmental Business
Arthur J. Gallagher & Co.**

Toxic mold is arguably the biggest issue currently facing both standard and environmental insurance markets. This session will provide a brief history of the problem, examples of the latest claims issues involving mold, cleanup measures and standards, risk management strategies for reducing the exposure, and a review of the current coverage options.

Tuesday, November 12, 2002

JEFFREY M. SLIVKA, ARM
Vice President
Director of Environmental Business
Arthur J. Gallagher & Co.

Mr. Slivka is presenting Workshop E, "The Latest in the Mold Debate." As vice president and director of Environmental Risk and Insurance at Arthur J. Gallagher & Co., located in King of Prussia, Pennsylvania, Mr. Slivka is responsible for the generation of environmental business throughout the United States; assisting the managing director with business strategy, marketing, and program development; and maintaining relationships with the primary providers of environmental liability insurance, namely AIG, Zurich, Kemper, ECS/XL Capital, Chubb, and Gulf/Travelers. In addition, Mr. Slivka serves as the environmental resource for AJG's Construction Services Division assisting in the sales and broking of environmental coverages.

Mr. Slivka's expertise is in developing and designing environmental risk management and insurance programs for the construction and manufacturing industries. However, Mr. Slivka has spent the last 14 years understanding environmental risk, underwriting environmental exposures, and designing cost-effective and innovative insurance solutions for various industries. Mr. Slivka also has conducted environmental site investigations for potential Superfund sites as an environmental consultant for Halliburton/NUS Corporation; developed an occurrence-based contractors pollution liability (CPL) policy; and created the most comprehensive environmental insurance program for construction wrap-ups/OCIPs.

Prior to joining Arthur J. Gallagher, Mr. Slivka was vice president and managed the Engineering and Construction Division at ECS, Inc., the environmental insurance arm of XL Capital.

Mr. Slivka received his B.S. in geology from Bloomsburg University of Pennsylvania. He has completed the professional designation of Associate in Risk Management (ARM) and is pursuing the Chartered Property and Casualty Underwriters (CPCU) designation. Mr. Slivka is a member of the Associated General Contractors of America (AGC) and serves on AGC's National Risk Management Committee. He also serves as the Environmental Risk Management columnist for the Expert Commentary section of International Risk Management Institute's IRMI.com Web site.

THE LATEST IN THE MOLD DEBATE

***Jeff Slivka
Arthur J. Gallagher & Co.***

I. The Latest on Mold

- a. Scientific update
- b. Regulatory update
- c. Legal update
- d. Commercial Insurance update

II. Scientific Update

- a. Latest on the link to health implications
- b. Development of permissible exposure limits
- c. New remediation/abatement techniques
- d. Trends in construction

III. Regulatory Update

- a. Legislation
- b. United States Toxic Mold Act

IV. Legal Update

- a. Trends in lawsuits
- b. Defining the "expert"

V. Commercial Insurance Update

- a. Claim trends
- b. Mold coverage in traditional property/casualty policies
- c. Mold coverage in professional liability policies
- d. P/C market response
- e. Environmental insurance coverage

VI. Securing Mold Coverage

- a. Type of risk
- b. Mold awareness/prevention programs
- c. Operation & maintenance manuals specifically addressing mold growth
- d. Carrier capacity, self insured retentions and mold specific endorsements
- e. Cost


VII. Conclusion

- a. Outlook for 2003 and beyond

A graphic of a spiral-bound notebook with a brown cover and a light beige page. The spiral binding is on the left side. The page contains the title 'A Mold Update' and a bulleted list of topics.


A Mold Update

- Scientific Community
- Legislation
- Legal Trends
- Insurance



The Slivka

Mold Aptitude Test



Slivka Mold Aptitude Test (SMAT)

1. Just this year, amongst all the hype about “toxic” mold, the CDC has identified a brand new specie of mold never identified before.
TRUE or FALSE?

SMAT (cont'd)

2. Mold dogs are:

- a. Mold sniffing canines
- b. Mold covered feet
- c. Drywall samples pulled by professionals to detect mold/moisture in the stud cavity of a structure
- d. None of the above

SMAT (cont'd)

3. In 2001, what was the biggest contributor to indoor air contamination?

- a. Pet dander
- b. Dust
- c. Automatic ice makers
- d. Carpets
- e. Human gastro-intestinal release

SMAT (cont'd)

4. The average homeowners claim for mold is:
- a. \$2,250
 - b. \$22,500
 - c. \$225,000
 - d. 3 EZ payments of \$29.99

SMAT (cont'd)

5. Which of the following Hollywood celebrities has made the headlines because mold grew in their homes?
- a. Erin Brockovich
 - b. Ed McMahon
 - c. Jack Gibson
 - d. Paul Murray
 - e. A&B
 - f. All of the above

SMAT (cont'd)

6. Mold remediation standards have recently been developed by various agencies, including the EPA and the NYC Dept of Health.
TRUE or FALSE?

SMAT (cont'd)

7. The United States Toxic Mold Safety and Protection Act of 2002 introduced by Rep. John Conyers (MI-D) is also known as:
- A futile attempt to address a moving target
 - The Melina Bill
 - The Ballard Bill
 - Superfund

The Answers

SMAT

1. Just this year, amongst all the hype about “toxic” mold, the CDC has identified a brand new specie of mold never identified before.

TRUE or FALSE?

SMAT

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as:

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- c. Conyer's Way
- d. Superfund

SMAT SCALE

- 7 out of 7 Freakin' Genius – mold on the brain
Could be an Underwriter
- 6 out of 7 You're the person who *thinks* you know it all! ***Must be an attorney***
- 5 out of 7 Stick around, you might learn something
- 4 out of 7 Qualified to sell pollution insurance
(broker)
- 3 or less Crawl back under that rock!!!

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SCIENTIFIC COMMUNITY

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Scientific Community

- Health Implications
 - Allergies: runny nose, cough
 - Infection: hospitals, “farmers lung”
 - Irritation: eyes, throat, asthma, odor
 - Toxic Response? Death?

“Toxic” Response

- Four Factors:
 - Specie of mold: antibiotic or mycotoxin
 - Metabolic by-products (ie, MVOCs, acids)
 - Individual tolerance (immune system)
 - Duration of exposure – Acute v. Chronic
 - Do you inhale enough to make it toxic?

Note – *Aspergillus* (path) and its fatality rate

Scientific Community

- Construction Product
 - Mold/mildew resistant products
 - Drywall barriers
 - Mold inhibitors
 - Glass matted wallboard
 - Product modification
 - Slab v. crawl space
 - Vinyl wall paper
 - EIFS
 - Corporate philosophy

Scientific Community

- Remedial Alternatives produce GOLD!
 - Clean (biocides, bleach, fungicide, etc)
 - Drying
 - Removal
 - Encapsulate: anti-fungal material

Note to self -

What about other contamination??!

Scientific Community

- Remediation
 - Mold dogs
 - Analysis: cultural v. molecular
 - Certification: ACGIH, NADC, IAQA
 - Mold contractors:
 - Regulatory
 - Science (CIH/Toxicologist)
 - Structural knowledge
 - Asbestos experience

Resources

- **Resources List – EPA**
- **U.S. Environmental Protection Agency (EPA),
Indoor Environments Division (IED)**
- An Office Building Occupant's Guide to IAQ
<http://www.epa.gov/iaq/pubs/occupgd.html>
- Biological Contaminants
http://www.epa.gov/iaq/pubs/bio_1.html
- Building Air Quality Action Plan (for Commercial Buildings)
<http://www.epa.gov/iaq/largebldgs/actionpl.html>
-

continued

Resources (cont'd)

- Floods / Flooding
<http://www.epa.gov/iaq/pubs/flood.html>
- Indoor Air Quality (IAQ) Home Page
<http://www.epa.gov/iaq>
- IAQ in Large Buildings / Commercial Buildings
<http://www.epa.gov/iaq/largebldgs/>
- IAQ in Schools
<http://www.epa.gov/iaq/schools/>
- Mold Remediation in Schools and Commercial Buildings
http://www.epa.gov/iaq/molds/mold_remediation.html

continued

Resources (cont'd)

- Mold Resources
<http://www.epa.gov/iaq/molds/moldresources.html>
- For more subject-specific links, go to: www.epa.gov/iaq/schools/links.html, or <http://www.epa.gov/iaq/asthma/links.html>, or www.epa.gov/iaq/moreinfo.html
- **U.S. EPA IAQ Information Clearinghouse (IAQINFO)**

Phone: (800) 438-4318 or (703) 356-4020

Fax: (703) 356-5386

Indoor air-related documents, answers to Indoor Air Quality (IAQ) questions, maintains listing of state IAQ contacts, and regional EPA contacts



State Legislation

- 10 states have produced in excess of 23 mold bills in 2001/02
- Areas of concern proposed:
 - Study/research/task forces
 - Development of PELs or equivalent
 - Insurance availability
 - Notification of mold growth
 - IAQ of schools (budgets dictate)

State Legislation

- CA:
 - Various bills
 - State Toxic Mold Act (Ortiz) passed in 1/1/02
 - Limited funding to support - \$3M over 5
 - Bill 732 – notification for RE transaction
 - Ortiz Bill
 - required insurers to pay if it results from a covered “event”
 - Void all mold exclusions previously approved by DOI

State Legislation

- IN HB1253
 - Proposed “standards” for cleanup of mold
 - Proposed toxic mold exposure limits
 - Failed to pass in 2002
 - Revised to focus study/research

The Melina Bill

- Proposed:
 - Mandate Research (EPA/CDC)
 - Standards for mold-removal professionals (EPA)
 - Changes in construction methods
 - Mold inspections for residential real estate
 - Creation of Federal mold insurance pool(FEMA)

Note to self – it doesn't appear that anything proposed reduces liability with mold?!



Legal Trends

- Lawsuits in 2002
 - There are more
 - Awards inc 100 fold in past 5 years (Morris, Polich and Purdy, LLP)
 - \$1.2B last year by carriers (Ins Info Institute)
 - Over 10,000 suits currently (300% since '99)
 - 50% of mold lawsuits in US/Canada are bad faith (Donvan Hatem LLP)
 - PD being awarded/PI is not

Legal Trends

- Big Debate – Causation
 - Traditional tort theory of negligence
 - Breach duty caused harm
 - Causation/damages hard to establish
 - Establish with experts

Note – the courts will qualify the expert

Legal Trends

- Expert or Spin Doctor?
 - The Team:
 - Structural/HVAC/geotech – cause of moisture
 - Medical – BI/damages
 - CIH/Tox – cause of damages
 - Mold abatement contractors – remediation

Note: Preponderance of the evidence, not absolute certainty

Legal Trends

- Commercial Insurance policies
 - Which pollution exclusion?
 - Is it a “pollutant”?
 - Was it released, dispersed, etc?
 - Was it the proximate cause of the damage/injury?
 - State?

Legal Trends

- Commercial Insurance dilemmas
 - EPA refers to mold as pollutant/contaminant
 - Stacking of limits
 - Cases to watch – mold, bacteria, fecal coliform

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INSURANCE UPDATE

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Insurance Update

- Texas DOI:
 - Claims rose 1,300% FQ01 v 3rdQ02
 - Cost rose 560% from 01-02
 - 72% increase in insurance complaints over last year
 - State Farm (TX): 250 claims in '00 v 250/week currently

Insurance Issues

- Commercial P/C policies
 - Mold Specific Exclusion
 - Possible sub-limit
 - Prospective coverage options:
 - Little to none
 - Builder's risk
 - Historical coverage options:
 - Fight the good fight
 - Claims adjusting expertise?

Insurance Issues

- Environmental Insurance Marketplace
 - Can provide solutions
 - Varies with:
 - Geographical region
 - Type of risk – residential/habitational/mechanical
 - Quality of risk – loss history, educational level

Insurance Issues

- Environmental Insurance
 - 20 + carriers
 - Various mold endorsements/exclusions
 - Silent IS DEADLY!
 - Not regulated by ISO
 - Mold Awareness Programs

Note to self – could be a real solution!!

Insurance Issues

- Risk/Insurance Advisors
 - Uninsured mold claims on property insurance policies
 - Professional E&O Liability loss exposures
 - Mold loss exposure is far worse than Superfund or Asbestos

In the Future...

- Science:
 - PEL will not be developed
 - Comeback of the “outhouse”!
- Legislation
 - Research will be conducted
 - Funding will be an issue
 - Lenders will jump on the wagon

In the Future...

- Legal:
 - Who knows?
- Insurance:
 - Insurers will pay less – drop in covered claims
 - Mold exclusions will prevail
 - New mold “pollution” policies will surface
 - Agents/brokers beware

In the Future...

- Pollen will be the next silent killer – of 2005!!

Note to self – what happened to radon? Pb? EMF? Cell phones